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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
STULII, VERA	

ART UNIT	PAPER NUMBER
1794	

NOTIFICATION DATE	DELIVERY MODE
01/27/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/725,005	SEGAL ET AL.	
	Examiner	Art Unit	
	VERA STULII	1794	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-9 and 18-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-9 and 18-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-9 and 18-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gordon (US 2003/0219513) in view of Mackay (UK 2,119,633), Matson (US 2006/0160050) and Riling et al (US 5,582,028).

In regard to claims 1 and 18, Gordon discloses a method and a system for monitoring or controlling a nutritional intake of a subject comprising providing a plurality of different types of foods packaged to contain a predetermined and substantially uniform content of at least one nutritional component (such as carbohydrate content); and controlling the number of food packages consumed during a predetermined time period (Abstract, [0031], [0066], [0072], [0074], [0087]). Gordon discloses an assembly of food units for use in effecting the method and the system (Abstract). Gordon further discloses spatial organization of foods in levels (Fig. 5b). Gordon further discloses an assembly of food units comprising a plurality of food units, each food unit comprising: (a) a package; and (b) a different type of food packaged in the package and having a predetermined content of at least one nutritional component such carbohydrate ([0031], [0066], [0072], [0074], [0087]) which is substantially uniform for all of the food units of the assembly of food units ([0026]). Gordon further discloses that the diet-responsive condition is selected from the group consisting of obesity, overweight, diabetes, hypercholesterolemia and hyperglycemia ([0037]). Gordon further discloses that each of

the packages is marked in a specific manner that identifies it with an assembly which comprises similarly marked packages ([0040]). Gordon further discloses that according to features in the described preferred embodiments the time period is one day ([0048]). Gordon further discloses that each package 13 is identified with respect to the type of food it contains, preferably both in writing and optionally via an image ([0071]). In regard to spoiling prevention means recitation, Gordon discloses that foods may be packaged after freezing for purposes of preservation ([0071]). Preferably, such foods have a sufficiently long storage or shelf-life that they may be packaged well in advance of consumption ([0071]). Therefore, Gordon discloses a system that is capable of reducing human body weight, comprising an assemblage of plurality of foods placed in a carton which can be called a "portable kit", wherein said plurality of foods have at least one predetermined nutritional component which can be carbohydrate content, with said foods organized/oriented in stacked levels, wherein each level includes food packages of substantially similar carbohydrate content.

Claim 1 further recites that said substantially similar carbohydrate content varies from level to level. Gordon does not disclose that feature. Mackay discloses a compartmented plate (10) is divided into different regions (16, 18, 24, 26) which are marked in a different manner, e.g. by color coding, to indicate the dietary characteristics of different types of food intended to be placed in each region (Abstract, Fig. 2). Mackay discloses that the plate may thus be used to assist in a diet intended, say, to reduce consumption of carbohydrates, with the different regions intended for foodstuffs having different carbohydrate content (Abstract). Mackay further discloses that a range of

different sizes and shapes of dishes may be provided (page 1 lines 41-46). Mackay further discloses that two smaller compartments 16 and 18 are each intended for foods having a relatively high carbohydrate content ad are conveniently colored in red (page 2 lines 86-89). Mackay further discloses that a relatively larger region 24 intended for foods having very low carbohydrate content, and relatively smaller region 26 is intended for foods having moderate carbohydrate content (page 2 lines 107-114). Thus, Mackay discloses restricting carbohydrate intake by providing food kit with defined carbohydrate content; providing plurality of foods with a known carbohydrate content and organizing foods in a portable device according to optimal carbohydrate intake, and freely consuming foods having variable carbohydrate content. Mackay discloses the feature of variable carbohydrate content from one compartment to another, which are marked in a different manner, e.g. by color coding, to indicate different levels of carbohydrate content (i.e. low, moderate and high).

Matson discloses a system and method that utilizes a set of fixed volume containers that are graduated to provide a user means to control the volume of food consumed over time (Abstract). In accordance with the instant invention, the contents of the containers are consumed over time according to a schedule which identifies the appropriate containers and the frequency of the meals to be consumed each day (Abstract). Therefore, Matson discloses organizing foods in a vertical arrangement with different values of controlled variable (in this case of volume).

Since Gordon discloses providing foods in individual containers based on at least one nutritional component, and Mackay discloses providing foods in individual portions

based on carbohydrates, and Matson discloses arranging foods in levels or sequences based on different values of the controlled variable, it would have been obvious to modify Gordon and to employ plurality of foods having a predetermined carbohydrate content and arrange them, so that they are grouped by the carbohydrate content for the purpose of diet control in view of the art taken as a whole. The references are seen to have been a general teaching to one of ordinary skill in the art to package on the basis of any nutrient desired, including carbohydrates, and arrange them in any sequence desired.

Claim 1 also recites the spoiling prevention means (see also claims 5, 6, 21 and 22). As disclosed, these spoiling prevention means is a cooling pack. Gordon discloses that any type of conventional storage expedient can be used with his food packs ([0071]). As evidenced by Riling et al, it is conventional in the art to employ a cooling pack to prevent spoilage. To modify Gordon and employ a cooling pack to prevent spoilage would have been an obvious result effective variable and an obvious function of the type of food and the preserving time desired. Therefore, it would have been obvious to modify the teachings of Gordon and use cooling packs in a portable kit/device/ apparatus, if necessary, in order to preserve the freshness of foods. The particular arrangement and color coding of the cooling packs would have been a matter of personal choice.

In regard to claims 2 and 19 , Gordon discloses that foods are contained in separate containers (food packaged in a package) ([0028], [0106]).

In regard to the shape/configuration limitation in claims 3, 4 and 23, it is noted that the configuration (shape) of the claimed kit is a matter of choice which the person of ordinary skill in the art would have found obvious absent persuasive evidence that the particular configuration of the claimed kit is significant (See MPEP 2144.04 (IV)). Also, rearranging/shifting foods in the kit would not have modified the operation of the claimed kit. Further in this regard, it is noted that the particular shape of the kit, and arrangement of the foods in the kit, would have been a matter of personal choice and design preference.

In regard to the color-coding limitation in claims 7-9, Gordon discloses that each of the packages is marked in a specific manner that identifies it with an assembly which comprises similarly marked packages [0040]. Mackay discloses a compartmented plate (10) is divided into different regions (16, 18, 24, 26) which are marked in a different manner, e.g. by color coding, to indicate the dietary characteristics of different types of food intended to be placed in each region (Abstract, Fig. 2), and therefore to employ color as the means to differentiate content would have been obvious. In regard to claim 9, Mackay discloses red color for the high-carbohydrate content foods, orange color coding for the moderate carbohydrate content foods, and green color coding for the low carbohydrate content foods (page 1 col. 89, 115; page 2 col. 2).

In regard to claim 20, Gordon discloses separate compartments in a one piece enclosure (Fig. 5b).

Response to Arguments

Applicant's arguments filed October 27, 2008, have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, JENNIFER MCNEIL can be reached on (571)272-1540. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Steve Weinstein/
Primary Examiner, Art Unit 1794

VS